

**REMARKS**

The Office Action dated January 12, 2004, has been received and reviewed.

Claims 1-35 are currently pending in the above-referenced application. Of these, only claims 1-18 have been examined, claims 19-35 having been withdrawn from consideration pursuant to a restriction requirement and subsequent election.

Claims 1-3, 5-11, 13-16, and 18 stand rejected.

Claims 4, 12, and 17 recite allowable subject matter, the indication of which is noted with appreciation.

Claims 4, 12, and 19-35 have been canceled without prejudice or disclaimer.

New claims 36-49 have been added.

Reconsideration of the above-referenced application is respectfully requested.

**Rejections Under 35 U.S.C. § 102(b)**

Claims 1-3, 5-11, 13-16, and 18 stand rejected under 35 U.S.C. § 102(b) for reciting subject matter which is purportedly anticipated by the description provided in U.S. Patent 5,637,469 to Wilding et al. (hereinafter "Wilding").

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claim 1 has been amended to include some of the limitations that previously appeared in claim 4. In particular, amended independent claim 1 is drawn to an assay system that includes, among other things, at least one detection zone carried by a surface of at least a portion of a waveguide.

Wilding neither expressly nor inherently describes an assay system that includes a detection zone carried by a surface of at least a portion of a waveguide. Accordingly, it is respectfully submitted that Wilding does not anticipate each and every element of amended

independent claim 1, as would be required to maintain the 35 U.S.C. § 102(b) rejection of independent claim 1.

Claims 2, 3, 5-11, 13-16, and 18 are each allowable, among other reasons, for depending either directly or indirectly from claim 1, which is allowable.

In view of the foregoing, withdrawal of the 35 U.S.C. § 102(b) rejections of claims 1-3, 5-11, 13-16, and 18 is respectfully requested.

#### **Obviousness-Type Double Patenting Rejection**

Claims 1, 14-16, and 18 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over the subject matter recited in claims 1-5 of U.S. Patent 6,316,274.

Independent claim 1 has been amended to recite an assay system that includes, among other things, at least one detection zone carried by a surface of at least a portion of a waveguide. This subject matter constitutes a portion of the subject matter that previously appeared in claim 4, which claim was not included in this rejection. Accordingly, it is respectfully submitted that amended independent claim 1 recites subject matter which is allowable over that to which claims 1-5 of U.S. Patent 6,316,274 are drawn.

Therefore, withdrawal of the obviousness-type double patenting rejection of amended independent claim 1, as well as of claims 14-16 and 18 that depend therefrom, is respectfully requested.

#### **Allowable Subject Matter/New Claims 36-49**

The indication that claims 4, 12, and 17 recite allowable subject matter is gratefully acknowledged.

As indicated previously herein, some of the subject matter that was previously recited in claim 4 has been incorporated into independent claim 1. More specifically, amended independent claim 1 now recites that the at least one detection zone of the assay system recited therein is carried by a surface of a waveguide.

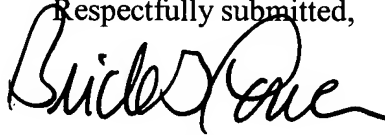
Claim 12, which has been canceled without prejudice or disclaimer, also included a recitation that the at least one detection zone be carried upon a surface of a planar waveguide.

Some of the elements that appeared in claim 17 now appear in new independent claim 36, from which claims 37-49 depend. Claims 37-49 recite substantially the same subject matter as claims 2-13 and 18, respectively.

### CONCLUSION

It is respectfully submitted that each of claims 1-3, 5-11, 13-18, and 36-49 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



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Date: April 12, 2004

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